

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

MACA.No. 2091 of 2013 ()

AGAINST THE AWARD IN OPMV 1516/2009 ON THE FILE FO THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL, KOTTAYAM DATED 27-08-2012

APPELLANT/PETITIONER:

1. MR.DEVASIA MATHEW, AGED 52 YEARS
S/O.SRI.MATHEW, THALIPPARAMBU HOUSE, PAIPPADU
CHANGANACHERRY.

2. MRS.THRESIYAMMA AGED 43 YEARS
W/O.DEVASIA, THALIPPARAMBU HOUSE, PAIPPADU
CHANGANACHERRY.

3. MR.NITHIN DEVASIA AGED 19 YEARS,
S/O.DEVASIA, THALIPPARAMBU HOUSE, PAIPPADU
CHANGANACHERRY.

BY ADVS.SRI.P.M.JOSHI

SMT.SIJI K.PAUL

SMT.ELIZABATH KOSHY

RESPONDENTS/RESPONDENT:

1. TOM JACOB
S/O.K.T.JACOB, AGED NOT KNOWN, KAYYALAKAM
CHEERANCHIRA P.O., CHANGANACHERY, PIN-686106.

2. THE DIVISIONAL MANAGER
ORIENTAL INSURANCE COMPANY LIMITED, KOTTAYAM
PIN-686001.

R2 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

R2 BY ADV. SMT.K.S.SANTHI

R2 BY ADV. SMT.LATHA SUSAN CHERIAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 06-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

AL/-

**T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.,**

M.A.C.A. No.2091 of 2013

Dated this the 6th day of March 2015

JUDGMENT

Ramachandran Nair , J.,

Appellants are mainly aggrieved by the inadequacy of the compensation awarded by the Tribunal. The total claim was Rs. 25 lakhs. The Tribunal has awarded an amount of Rs. 8,70,500/-, from which, 10% stands reduced, on the ground that the deceased did not wear helmet.

2. The accident occurred on 25.9.09 at 8.30 p.m. The deceased Jithin Devasia, son of the appellants 1 & 2 and the brother of appellant No.3, was riding his motor cycle bearing registration No. KL-33/7320 along the Changanachery-Vazhoor road and at a place called Aramanappady bhagam, the offending vehicle, a car bearing registration No. KL-33/-3666 coming through wrong side, hit the motor cycle of the deceased and he sustained fatal injuries all over the body. He was immediately taken to the St.Thomas Hospital, Chethipuzha. But

he succumbed to the injuries on the same day.

3. The appellants claimed that he was a brilliant student and he was doing his last semester in B.Tech (Electronics & Communication) at Saintgits College of Engineering, Kottukulam hills, Pathamuttam P.O., Kottayam.

4. The appellants claimed monthly income at the rate of Rs. 40,000/- as he was expect to work as a Software Engineer in the beginning. The Tribunal has fixed his income at the rate of Rs. 7500/- per month and added 30% for better propects and fixed the monthly income at Rs. 9750/-.

5. We heard the learned counsel for the appellants and the learned counsel for the respondent also.

6. The learned counsel for the appellants submitted that fixation of monthly income is too low. He was a brilliant student who had scored high marks in all examinations. He secured admission for Engineering in the merit quota. Exts. A6 and A14 are the mark lists of the deceased, and to prove that he had a very good background in other spheres of activities, they have produced Exts.A15 to A21. Exts. A22 & 23 are other certificates to reveal that he was a brilliant student.

7. The Tribunal in paragraph 13 found that going by

various certificates produced, he would have attained a better position in his life. He was a studious and a brilliant student who had participated in many programmes conducted by various organisations and companies. Finally it was concluded that he would have earned Rs.7500/- per month as a Software Engineer in the beginning.

8. The Tribunal then added 30% for future prospects and deducted 50% for personal living expenses. Therefore, the multiplicand has been arrived at Rs. 4875/-.

9. It is also submitted that the Tribunal has adopted the multiplicand by taking the age of the parents instead of the deceased. Further it is pointed out that towards pain and suffering, no amount has been granted. Towards funeral expenses, Rs. 5,000/- alone is granted and for compensation for loss of love and affection Rs. 20,000/- and for loss of estate, another Rs.25,000/- has been granted.

10. Learned counsel for the Insurance Company submitted that herein, as he had not obtained any job, only notional income alone can be fixed and therefore, fixation of notional income, as now done by the Tribunal is perfectly justified. It is also submitted that the multiplier adopted is also proper going

by the age of the parents.

11. The evidence in this case really indicates that he was a brilliant student and had very good academic reports also. He was also active in other spheres of activities in the college. To prove the same, certificates have produced. As regards all these aspects, findings are in favour of the appellants as already noticed. The quantum alone viz., the monthly income he would have earned is under dispute.

12. In this context, the recent judgment of the Apex Court reported in ***Ashvinbhai Jayantilal Modi v. Ramkaran Ramachandra Sharma & Another [2015 (2) SCC 180]*** various principles have been discussed by the Apex Court. Therein, the deceased was a student of M.B.B.S for the first year. He was aged 19 years old and paragraph 9 of the judgment will show that, he was having very good marks at the time of the accident. The Tribunal assessed future prospects at Rs. 18,000/- per month and after deducting 1/3 for personal expenses, fixed it as Rs.12,000/-. We find from the judgment of the Apex Court that in paragraph 11 after finding that the student would have reached greater heights his future income has been fixed at Rs.25,000/- per month and Rs.3 lakh p.a.

13. Herein, the question is whether the appellants will be entitled for the amount as claimed by them in the application as Rs.40,000/- per month. Of course, as regards obtaining of any job by campus recruitment, no documents have been produced before the Tribunal. But even then, being a bright student, who had reached final stage of the course, he could have expected a better job considering his background. The accident is of the year 2009. Therefore, after considering various aspects, we are of the view that the amount fixed by the Tribunal is too low. It is refixed at Rs. 15,000/- per month. Being a bachelor, 50% will have to be deducted towards his personal expenses.

14. As far as the multiplier is also concerned, going by the judgment of the apex Court in ***Sarla Verma v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]***, the age of the deceased will have to be reckoned for calculation of multiplier. The age of the deceased being 21, the multiplier will be 18. Thus the compensation for loss of dependency will be $7500 \times 12 \times 18 = 16,20,000/-$.

15. We also award Rs. 25,000/- towards funeral expenses and Rs. 1 lakh towards compensation for loss of love and affection. Even though, he died on the same day of the accident,

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reasonable amount will have to be awarded for pain and suffering for which we fix it at Rs. 10,000/-. Accordingly, the total compensation will be the following.

Sl. No.	Heads	Amount awarded	Amount modified
1	Transport to hospital	1000	1000
2	Damage to clothing	500	500
3	Funeral expenses	5000	25000
4	Compensation for loss of dependency	819000	1620000 (Rs.7500x12x18)
	Compensation for loss of love and affection	20000	100000
6	Compensation for loss of estate	25000	25000
7	Pain and Suffering	-	10000
	Total	870500	17,81,500

16. Thus the appellants will be entitled for a total compensation of Rs. 17,81, 500/-(Rupees Seventeen Lakh Eightly One Thousand Five Hundred only) which will carry interest at the rate of 9% p.a from the date of petition for the enhanced compensation in the light of the judgment of the apex court in **Supe Dei(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.** [(2009)4 SCC 513].

17. Even though, the Tribunal has reduced 10% from the total amount for not wearing helmet, such a direction cannot be justified. Herein, the finding of negligence is against the driver of

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the offending vehicle. Therefore, the claimants will be entitled for the entire amount of compensation awarded by the Tribunal.

18. In filing this appeal, there was a delay of 339 days which this Court had condoned by order in C.M Application No. 2567/13 dated 20.1.2015. It was clarified therein that if ultimately, the appeal is allowed, the Insurance Company will not be liable to pay interest for the period covered by the delay. Therefore, we make it clear that, for the above period, the appellants will not be entitled to interest for the enhanced amount of compensation.

19. Lastly, we make it clear that, as the accident is of the year 2009, on deposit of the amount, the appellants are permitted to withdraw the amount also. The amount will be divided equally among the appellants 1 & 2. There will be no order as to costs in this appeal.

Sd/-

**T.R.RAMACHANDRAN NAIR
(JUDGE)**

Sd/-

**P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge